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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RTID 0648-XA238

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Offshore of Massachusetts, Rhode Island, Connecticut, and New York

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: NMFS has received a request from Vineyard Wind, LLC (Vineyard Wind) for the re-issuance of a previously issued incidental harassment authorization (IHA) with the only change being effective dates. The initial IHA authorized take of 14 species of marine mammals, by Level B harassment, incidental to marine site characterization survey activities off the coast of Massachusetts in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS-A 0501 and OCS-A 0522) and along potential submarine cable routes to a landfall location in Massachusetts, Rhode Island, Connecticut, and New York. The project has been delayed and none of the work covered in the initial IHA has been conducted. The initial IHA was effective from June 1, 2020 through May 31, 2021. Due to delays, Vineyard Wind has requested re-issuance with new effective dates of June 21, 2020 through June 20, 2021. The scope of the activities and anticipated effects remain the same, authorized take numbers are not changed, and the required mitigation,

monitoring, and reporting remains the same as included in the initial IHA. NMFS is, therefore, issuing a second identical IHA to cover the incidental take analyzed and authorized in the initial IHA.

DATES: This authorization is effective from June 21, 2020, through June 2020, 2021.

ADDRESSES: An electronic copy of the final 2020 IHA previously issued to Vineyard Wind, Vineyard Wind's application, and the **Federal Register** notices proposing and issuing the initial IHA may be obtained by visiting

<https://www.fisheries.noaa.gov/action/incidental-take-authorization-vineyard-wind-llc-marine-site-characterization-surveys>. In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Rob Pauline, Office of Protected Resources, NMFS, (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined “negligible impact” in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term “take” means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines “harassment” as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On May 6, 2020 NMFS published final notice of our issuance of an IHA for the take of small numbers of marine mammals incidental to site characterization surveys with effective dates of June 1, 2020 through May 31, 2021 (85 FR26962). On May 27, 2020 Vineyard Wind requested that the effective dates of the IHA be revised to June 21, 2020 through June 20, 2021 due to operational delays. With up to 365 vessel days planned for

survey activities, Vineyard Wind wants to be most efficient with the one-year duration of the IHA. The re-issued IHA would be identical to the previously issued IHA. Therefore, re-issuance of the IHA is appropriate

Summary of Specified Activity and Anticipated Impacts

The planned activities (including mitigation, monitoring, and reporting), authorized incidental take, and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the previously issued IHA.

The purpose of Vineyard Wind's marine site characterization surveys is to obtain a baseline assessment of seabed/sub-surface soil conditions in the Lease Area and cable route corridors to support the siting of potential future offshore wind projects.

Underwater sound resulting from Vineyard Wind's proposed site characterization surveys, including the use of high-resolution geophysical (HRG) equipment, are expected to produce sound in the marine environment that may result in the behavioral harassment of marine mammals. The location, timing, and nature of the activities, including the types of equipment planned for use, are within scope of those described in the initial IHA. The mitigation and monitoring are also as prescribed in the initial IHA.

Fourteen marine mammal species are expected to be taken by Level B harassment. A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in the previous documents referenced above. The data inputs and methods of estimating take are identical to those used in the initial IHA. NMFS has reviewed recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and

determined that no new information affects our original analysis of impacts or take estimate under the initial IHA.

We refer to the documents related to the previously issued IHA, which include the **Federal Register** notice of the issuance of the initial 2020 IHA for Vineyard Wind's site characterization survey work (85 FR 26962), Vineyard Wind's application, the **Federal Register** notice of the proposed IHA (85 FR 7952), and all associated references and documents.

Determinations

Vineyard Wind will conduct activities as analyzed in the initial 2020 IHA. As described above, the number of authorized takes of the same species and stocks of marine mammals are identical to the numbers that were found to meet the negligible impact and small numbers standards and authorized under the initial IHA and no new information has emerged that would change those findings. The re-issued 2020 IHA includes identical required mitigation, monitoring, and reporting measures as the initial IHA, and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) Vineyard Wind's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review. This action is consistent with categories of activities identified in CE B4 of the Companion Manual for NOAA Administrative Order 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 ([16 U.S.C. 1531](#) *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the NMFS Greater Atlantic Regional Fisheries Office (GARFO), whenever we propose to authorize take for endangered or threatened species.

The NMFS Office of Protected Resources Permits and Conservation Division is authorizing the incidental take of four species of marine mammals which are listed under the ESA: The North Atlantic right, fin, sei and sperm whale. We requested initiation of

consultation under Section 7 of the ESA with NMFS GARFO on February 12, 2020, for the issuance of this IHA. BOEM consulted with NMFS GARFO under section 7 of the ESA on commercial wind lease issuance and site assessment activities on the Atlantic Outer Continental Shelf in Massachusetts, Rhode Island, New York and New Jersey Wind Energy Areas. The NMFS GARFO issued a Biological Opinion concluding that these activities may adversely affect but are not likely to jeopardize the continued existence of the North Atlantic right, fin, sei and sperm whale. Upon request from the NMFS Office of Protected Resources, NMFS GARFO issued an amended incidental take statement associated with this Biological Opinion to include the take of the ESA-listed marine mammal species authorized through this IHA in April, 2020.

Authorization

NMFS has issued an IHA to Vineyard Wind for marine site characterization surveys associated with the specified activity from June 21, 2020, through June 20, 2021. All previously described mitigation, monitoring, and reporting requirements from the initial 2020 IHA are incorporated.

Dated: July 8, 2020.

Donna S. Wieting,
Director, Office of Protected Resources,
National Marine Fisheries Service.